

Part 201 Complexity Subgroup Meeting Summary

October 9, 2006
MSHDA
Lansing, Michigan

Welcome and Introduction

The meeting began at 9:30 AM.

Chairman Paul Zugger welcomed the members of the Part 201 Phase II Discussion Group Complexity Subgroup. Subgroup members, DEQ staff, and others in attendance introduced themselves. Subgroup members and others in attendance are shown on the attached attendance sheet.

Paul reviewed the agenda for the meeting. There were no suggested changes. Paul advised the subgroup that the pizza lunch was sponsored by Horizon Environmental.

Process, Roles, and Logistics

Process:

The subgroup will follow the *Protocol for Operations of the Part 201 Discussion Group* as presented at the September 25, 2006, kickoff meeting.

Ground Rules:

Paul suggested only a few ground rules. Non-members in attendance may participate in the discussions, unless limited by the chairperson. The presenters for today's discussion items were asked to keep their comments to less than 10 minutes to allow the maximum amount of time for discussion.

Overview of Current 201 Processes

DEQ Remediation and Redevelopment Division Chief Andy Hogarth presented an overview of the current 201 process. (See attached PowerPoint Presentation.) Andy also provided the following handouts: *Overview of Cleanup Categories, Exposure Pathways, and Remedial Categories, October 2006*; *Remediation and Redevelopment Division Approval and Tracking Forms*.

Andy discussed the cleanup criteria and how they fit in with the decision-making process. Updating criteria requires a rule-making process. It typically takes well more than a year to correct outdated criteria.

There was general discussion regarding the number of Part 201-related projects. Andy will forward information detailing number of cleanups and other actions.

Issue Introduction: Sheer Number of Cleanup Criteria Exposure Pathways, and Other Considerations.

Perspectives:

Allen Reilly, Horizon Engineering

Allen discussed his concerns with the risk assessment process. Under the previous program, when the risk level was 1:1,000,000, it was assumed that the risk level assured protection against all pathways. When the risk level was reduced to 1:100,000, the program actually became more conservative because additional pathways, such as indoor air, were added. These new, more conservative criteria and pathways often drive cleanups. The current approach assumes the risk level determination is a “bright line” when in fact it is a probability calculation. The “Monte Carlo” simulations and other approaches that take probability into consideration present a more accurate reading of the actual risk by presenting “confidence intervals.” The “bright line” or deterministic approach creates a risk communication problem.

Allen pointed out that many sites do not need to go through the full review process. He suggested the “80-20 rule” would predict that 80 percent of the cleanups should take 20 percent of the resources and time, while 20 percent will demand 80 percent of the attention. The program should be administered taking that into consideration.

But the current system is tailored to fit the most complex situations, and almost all projects end up going through the full process. We should find an approach where the 80 percent (less complex projects) can proceed through an expedited process by allowing early assumptions and opting out of some of the various considerations that drive program complexity. To do this, the regulated party would need to accept certain simplifying assumptions, and the DEQ would need to commit to cleanup criteria based on those assumptions. Through these assumptions and commitments, the number of criteria and pathways could be greatly reduced, simplifying the process.

Brad Venman, NTH

Brad presented tables from Attachment 1 to RRD Operational Memorandum No. 1 listing the generic cleanup criteria and screening levels for various land use categories. The selected tables were only 2 of 37 pages of criteria. Brad pointed out that the tables could be simplified by reducing use categories into two: Residential and Nonresidential. The commercial categories could be dropped because they rarely impact the final criteria decisions. The number of land use options available under the current approach often leads to greater expenditures in the long run.

Discussion

Discussion followed regarding process changes to reduce complexity. It was suggested that pre-meetings with the DEQ to obtain initial determinations based on given assumptions would be helpful. At these meeting, strategies could be developed leading to quicker decisions and remediation actions. Also, the number of chemicals of concern could be reduced.

Under the current approach, the most expeditious and least costly cleanup option is not obvious, and many of the questions and discussions are in the end not critical to the final solution. The decision needs to be made early on whether to clean up or leave in place. And pre-meetings with various scenarios being discussed can help make that decision. These meetings should lead to an early determination of the land uses, exposure pathways, and contaminants that will drive the cleanup decisions.

Discussion focused on how various pathways can be eliminated from consideration (referred to as “off-ramps”), e.g., for the indoor air exposure pathway, providing a permanent vapor barrier may eliminate this pathway.

The group discussed whether the approach should be different for a liable party (remediation responsibility) or a nonliable party (due care responsibility). The vast majority of determinations deal with nonliable parties. There is little incentive to remove even limited risks if there is no liability. Therefore, we do not see as much simple removal because there is no incentive to do so.

Issue Sub-point: Should the number of land use categories be reduced (e.g., to just residential and nonresidential)?

Perspectives:

Sharon Newlon, Dickenson Wright, PLLC

Sharon presented perspectives on moving to residential and nonresidential land use categories and in consolidating exposure pathways. Land use restrictions pose problems relying on zoning to categorize prospective uses, which clouds the issues surrounding that property.

Tom Hutchison, CH2M Hill

Tom also supported simplification of the process, perhaps moving to two categories such as “unrestricted” and a generic “commercial/industrial” land use. There is also the third category of “site-specific use.” He also supports having a process to determine early on which pathways can be eliminated. Another improvement would be to have tables that show only the most restrictive criteria for each substance that is present.

The group discussed whether the DEQ could commit up front to eliminating certain exposure pathways under certain assumptions. Perhaps this could be accomplished by using a simplified form or otherwise presenting the program in a manner that would allow a party to make decisions.

The subgroup discussed the groundwater pathway. Are there some generic conditions where this pathway does not need to be considered? For example, in Illinois, the state uses a “General Resource Use” category for the groundwater under Chicago, so site cleanups do not have to protect for groundwater consumption exposure pathway.

Regarding the Remedial Action Plan (RAP) process, the RAP content form is too lengthy, complicated and detailed. What is needed is a simple form to capture the critical information and a step-by-step procedure for eliminating options and locking down the preferred approach. As options are eliminated and the DEQ agrees to drop pathways, this

has to work as a one-way ratchet for both sides, so backtracking does not occur. This is most likely well before the RAP submittal, which starts the six-month review period.

Matt Naud, City of Ann Arbor

Matt pointed out that from a city's perspective, it is preferable to maximize the remedial actions and minimize the use of land use/pathway restrictions. It is preferable to have mixed uses available at urban sites. Also, from a financial perspective, the city can bring grants and other financial assistance to the table to help fashion a more complete solution. In one groundwater contamination situation in Ann Arbor, the city was able to bring \$3 million to the table.

Leaving contaminants in place through land use and pathway restrictions creates a liability issue that continues with the land. Cities are concerned about this. The Liability Work Group should look at this issue. There is increased risk if you leave hazardous substances in place and rely on site management.

Discussion

General discussion focused on increasing the collaborative process before formal submittal of the RAP. Once the RAP is submitted, the six-month review time starts. There is interest in a process that provides for more collaborative discussion early on. The key is to reach some kind of early decisions on both sides that then carry on through completion. Both parties need to be sure the decisions are secure, and won't be changed under further review (recognizing that if circumstances change, that is a different situation.)

The process would include: collaborative discussions; definitive conclusions based on a set of assumptions; and commitment to intermediate decisions that drive the final remedial plan. Also discussed was a checklist approach that would simplify options and lay out decisions, with assurances and commitment that the assumptions hold.

There was discussion regarding decentralized decision making and the need for statewide consistency. What is the role of the district decision-making vis-à-vis the Quality Review Team (QRT) process? It was suggested that if assumptions are locked down, options eliminated, and cleanup decisions simplified, it would lead to straightforward plans that could reduce or eliminate the QRT review process in 80 percent of the cases.

It was agreed that the QRT approach needs to be looked at as an agenda item by the subgroup. This is reserved for a separate discussion.

Issue Sub-point: Should the number of exposure/migration pathways be reduced or “off-ramps” developed?

Perspectives:

Richard Barr, Honigman, Miller, Schwartz & Cohn

Richard reviewed how the “off-ramp/on-ramp” concept could reduce complexity. If criteria could be developed and relied upon to eliminate a pathway (off-ramp), that would reduce complexity. For example, the Groundwater-Surface water Interface (GSI) pathway should be eliminated from consideration if certain criteria are met, such as distance to the surface water. He suggested that the subgroup needs to consider when the GSI is a relevant pathways, including direct venting to surface waters or indirectly through storm sewers, and the relationship of Part 201 with Part 31.

To explore this further, the inter-relationship of Part 201 and Part 31 needs to be explored further. How is surface water venting regulated under Part 31? When groundwater vents to a storm sewer, how is that regulated? What are the general principles that guide the inclusion of this pathway? When can you eliminate consideration of this pathway?

Likewise, the pathway of drinking water protection should be eliminated when certain situations are met, e.g., perched groundwater table, below which the drinking water aquifer is protected by a clay layer. These off-ramp criteria need to be clear and reliable. Relative to the inhalation pathway, is there a size (area) consideration below which this pathway can be eliminated?

General discussion focused on a possible screening tool by which the off-ramps can be determined. The earlier this happens in the process, the better. More projects will be resolved quicker. Having set procedures is very important. What are the qualitative and quantitative parameters? Off-ramp criteria, such as isolation distances for evaluating the indoor air pathway, were discussed during the development of the indoor air criteria. Perhaps the DEQ should develop off-ramp criteria.

Discussion also focused on site-specific geography and use such as having generic categories, exclusionary ramps; if certain conditions exist, this pathway could be eliminated. Can there be generic numerical pathway standards? “Screening standards” vs. remedial action requirements/standards when certain conditions are present and can eliminate one or more pathways. For example, could the DEQ develop a generic lateral isolation distance or a vertical isolation distance that would eliminate consideration of the indoor air specific pathway?

Chuck Hersey, SEMCOG

He sees a number of things to change, such as establishing screening criteria and off-ramps. The important thing is to make sure the changes are “value added”. We should assess the effect of the changes and make corrections as needed. We need to be careful not to lose what we have through legislative changes that aren’t carefully thought out and tested.

As we attempt to make program and process improvements, we need to guard against the charge of “backsliding.” Discussions with stakeholders and clear explanations of the

protections that will be maintained are important. Specifically, how do the changes advance cleanups and redevelopment? We need to circle back in two to three years and see if in fact the changes did advance the cause.

A big-picture item would be to reconsider risk levels to determine if the current requirements are too conservative, not allowing sites to be cleaned up at an acceptable pace. Would it be better to be a little less conservative and perform a lot more cleanups, reducing the overall risk?

There was general discussion regarding the progress of the current program and the need to benchmark how we are doing: Achieving Cleanups, Providing for Redevelopment (See attached information from Andy Hogarth that he forward after the meeting.) We should also look at fundamental changes; for example, do we need a RAP in all situations? What sorts of statutory or rule changes could simplify the program and still provide the same level of protection?

Christene Jones, Barr Engineering

Christene emphasized the importance of early consultation with the DEQ. Develop a check list approach to simplify the decision making; address major problems as they come up; eliminate exposure pathways where they are statistically not significant; and prioritize the pathways that are of concern. All this needs to be done well before the RAP is developed.

Regarding self-implemented cleanups, the efficacy of this work varies greatly depending on the commitment and the responsiveness of the responsible party. Some work out great, and some are not remediated to an acceptable level.

Further discussion on exposure pathways focused on the impact of the aerial extent of the facility. As the distance from the contaminated site increases, what happens with exposure assumptions? What happens with right-of-way issues like railroad lines?

If a land use restriction is imposed as part of a long-term plan, such as restricting the use of groundwater for drinking, it may be beneficial to put that restriction in promptly to assure no drinking water use, not wait until the project completion. (Note: Adding restrictions before title change can complicate the title process.)

Discussion

There was discussion regarding the use of a short (2-page) form by which a person can determine which pathways are relevant and which cleanup criteria are applicable. This needs to have predictability and permanence, and not be subject to subsequent changes by the agency if everything else remains constant. The idea is to make lasting decisions along the way, as conditions are verified. Some members felt the focus of this approach should be on GSI and Indoor Air pathways first.

The IL approach was discussed. This process involves four steps: investigative report; focused comprehensive investigation (after which some pathways are taken off the table); remedial objectives (2–3 pages, get state approval); and RAP.

Next Steps:

The group would like to focus the next meeting on Part 31, specifically the GSI. It was agreed to have two principal agenda items:

- Follow-up on issues and ideas from this meeting
- Part 31 and GSI. (How Part 201 and Part 31 are linked, historical perspectives, statute/rule requirements; venting to surface waters and storm sewers, point source/nonpoint source considerations; federal oversight.)

Issues to be further developed relative to today's discussion:

- Checklist and/or form for early decision making;
- Process for early party/agency commitments on applicable site characteristics: pathways, indicator chemicals, data sufficiency; cleanup criteria
- Improved process to impose off-ramps, on-ramps (e.g., ambient air pathway only applies if.....). This would be an on-ramp approach.
- 80/20 concept – how to group and move the simpler ones faster
- Reduce land use categories: Restricted – Unrestricted (Commercial/Industrial) – Site Specific

Future Meeting Topics:

- How to manage change, new science
- The QRT process and delegation issues
- Run the cleanup program as a permit program – permit to occupy a site, or certificate to occupy a site, with specific duties spelled out (due care, etc.)
- Due Care Plans – how to encourage people to submit them.

Some or all of these may be of interest to the Liability Subgroup.

NEXT MEETING

The next meeting is scheduled for November 6, 2006, from 9:30 AM to 3:00 PM and will be held at the MISHDA Offices at 735 East Michigan Ave. in Lansing, MI.

ATTACHMENTS (Available on Electronic Version)



Part 201
Complexity.ppt



Re Numbers of Clean
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Information
requested @ Part 201

Part 201 Complexity Subgroup

Meeting: October 9, 2006

Attendance

Name	Organization
Richard Barr	Honigman Miller Schwartz & Cohn
Patty Brandt	RRD - Executive Section
John Frankenthal	Atlantic Richfield Company
Chuck Hersey	Southeast Michigan Council of Governments
Tom Hutchinson	CH2M Hill, Inc.
Bruce Jeffries	Michigan State Housing Development Authority
Christene Jones	Barr Engineering
Dr. Vincent Nathan	City of Detroit
Matt Naud	Environmental Coordinator Ann Arbor
Sharon Newlon	Dickinson Wright, PLLC
Allen Reilly	Horizon Environmental
Frank Ruswick	Department of Environmental Quality
Andy Such	EnviroPolicy Consultants
Brad Venman	NTH Consultant
Robert Wagner	RRD - Gaylord District Office
Sharon Woolman	The Dow Chemical Company
Rebecca Yedan	Southeast Michigan Council of Governments
John Barkach	Great Lakes Env. Center
Chris Flaga	MDEQ - RRD
Jeff Crum	Hamp, Mathews & Assoc., Inc.
Paul Zugger	Public Sector Consultants
Carol Barish	Public Sector Consultants

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